

service area. The highest population density wire centers are Effingham (371.18 persons per square mile) and Taylorville (141.03). The next highest is Charleston (140.26), but the Company has excluded the Charleston wire center from its proposed ETC designated area, even though it is within its FCC licensed area, just like the competitive ETC in Advantage Cellular<sup>7</sup> did. The wire centers that Cellular Properties has included in its proposed ETC designated area include Humboldt (16.67), Oakland (23.98), Atword (27.37), Sigel (31.27), Ashmore (33.74), Arcola (51.63), Arthur (62.97) and Mattoon (130.06). The population density of the Illinois Consolidated wire centers in the proposed ETC designated service area is slightly higher (62.39 persons per square mile) than the average population density for the entire Illinois Consolidated study area (59.52 persons per square mile), however it is Cellular Properties' position that the Commission should find that there is no creamskimming effect with respect to the Illinois Consolidated study area. As referenced above, the FCC in its Virginia Cellular Order found with respect to one rural telephone company service area that there was no creamskimming effect even though the average population density of the wire centers which the CETC proposes to serve was slightly higher.

### **3. IITA Position**

Mr. Schoonmaker questioned whether it was appropriate to include the Cisne and Mount Erie wire centers of Wabash Telephone Cooperative in the ETC Designated Service Area for Cellular Properties based on his assessment that these exchanges have very little coverage and are almost entirely outside the Cellular Properties FCC-licensed area. Mr. Schoonmaker recalculated the creamskimming analysis for Wabash's service area excluding these 2 wire centers and concluded based on such recalculation that there would be some level of creamskimming effect.

Both Staff witness, Dr. Zolnierrek, and Mr. King responded to Mr. Schoonmaker on this point. Based upon IITA's final position not to oppose Applicant's Draft Order, Mr. Schoonmaker's concern appears to have been mitigated.

### **4. Staff Analysis**

Staff witness Dr. Zolnierrek summarized the FCC's position on such redefinitions and creamskimming as follows:

As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the Virginia Cellular ETC Designation Order and the Highland Cellular ETC Designation Order. As discussed below, the state commissions that apply a creamskimming

<sup>7</sup> Advantage Cellular Systems, Inc. ETC Designation Order, CC Docket No. 96-45, Adopted and Released: October 22, 2004.

analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.

According to the FCC, creamskimming arises when an ETC seeks designation in a disproportionate share of high-density wire centers in an incumbent LEC's service area. Dr. Zolnierек noted that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Therefore, his analysis is limited to the wire centers in the rural service areas.

Dr. Zolnierек conducted an independent creamskimming analysis. For each of the six rural ILEC service areas, he computed population per square mile information for each wire center contained within the rural service area. Dr. Zolnierек testified that he obtained wire center boundary information from Wire Center Premium v 7.3 and that he obtained population and area information from the 2000 Census of Population and Housing ("2000 Census of Population").

With respect to each of the rural ILEC service areas for which redefinition is sought, Dr. Zolnierек testified that the information he collected did not provide any reason to believe that the potential for creamskimming exists with respect to Cellular Properties' proposal to serve only a portion of the ILEC service area. With respect to the service areas of Odin, Montrose, Citizens and Verizon South, he testified that the information he compiled suggests that the average population density of the portion of the ILEC service area Cellular Properties proposes to include as part of its designated ETC area is below the average population density of the portion of the ILEC service area Cellular Properties does not propose to include as part of its designated ETC area and below the average population density of the entire ILEC service area.

With respect to the Illinois Consolidated service areas, he testified that the Commission has determined that slight disparities in density do not give rise to significant cream-skimming concerns. The average population density of the portion of the ICTC service area Cellular Properties proposes to include as part of its designated ETC area is slightly greater than the average population density of the portion of the ICTC service area Cellular Properties does not propose to service (the ratio of the two population densities is 1.08:1) and slightly greater than the average populations density of the entire ICTC service area (the ratio of the two population densities is 1.06:1). In both cases the disparities are less than 5 persons per square mile. Therefore, I recommend the Commission accept Cellular Properties' proposed ETC service area definitions in the ICTC service area.

With respect to the Wabash service area, he testified that the Commission has determined that slight disparities in density do not give rise to significant cream-skimming concerns. The average population density of the portion of the Wabash service area Cellular Properties proposes to include as part of its designated ETC area is slightly greater than the average population density of the portion of the Wabash service area Cellular Properties does not propose to service (the ratio of the two

population densities is 1.11:1) and slightly greater than the average populations density of the entire Wabash service area (the ratio of the two population densities is 1.03:1). In both cases the disparities are less than 2 persons per square mile. Therefore, he recommended that the Commission accept Cellular Properties' proposed ETC service area definitions in the Wabash service area.

Therefore, Dr. Zolnierек concluded that based on the evidence supplied by Cellular Properties and the evidence he independently gathered and presented above, it was his recommendation that the Commission find that the potential for creamskimming effects does not arise with respect to the Cellular Properties' proposed ETC area.

#### **D. Commission Conclusions**

The Commission has been given broad discretion in analyzing whether the designation of additional carrier as an eligible telecommunications carrier in a given area, thereby allowing the carrier to seek Universal Service funding support, is in the public interest.

In this regard, the parties and Staff have agreed, and the Commission concurs, that the federal guidelines as described in the FCC's ETC Order should be the minimum guidelines applied in this proceeding. Section 214(e)(2) of the Federal Act of 1996 places special emphasis on areas served by rural carriers. It provides, in part, "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."

As indicated by the parties and discussed above, a public interest analysis in the context of ETC applications involves the balancing of a number of factors.

One such factor is the benefits of increased customer choice, although that value alone is unlikely to satisfy the public interest test. In the instant proceeding, the designation of Cellular Properties as an ETC will increase customer choice in the areas requested.

Another set of factors is the advantages and disadvantages of the particular service offering. In terms of benefits, Cellular Properties' offering will provide mobility, the possibility of fewer toll charges, increased availability of some "premium" services, and increased access to emergency services.

With regard to disadvantages such as dropped call rates and poor coverage that can be associated with wireless service, Cellular Properties has committed to undertake substantial network improvements intended to improve coverage in rural areas. Cellular Properties' various commitments to service quality will also serve to minimize these disadvantages and will provide this Commission with information necessary to monitor its performance.

Another disadvantage identified by IITA witness Mr. Schoonmaker is that adding ETCs in the study areas of rural carriers has the probable effect of increasing the costs to the existing ETC by reducing the number of lines served by the existing rural LEC and, consequently, the number of lines over which the fixed costs of the rural LEC can be spread. On the other hand, because Cellular Properties is an Illinois-specific carrier, whatever network investment it makes will likely benefit rural customers.

As noted above, as part of the public interest assessment in this docket, creamskimming analyses were performed. Such an analysis is relevant where, as here, a competitive ETC seeks to only include a portion of the ILEC study area in its ETC service area. The concern is that a competitive ETC may be providing service to only the lower-cost portion of the ILEC study area while receiving support based upon an overall higher average cost that is spread across the entire LEC study area.

Staff witness Dr. Zolnierrek explained that creamskimming arises when an ETC seeks designation in a disproportionate share of high-density wire centers in an incumbent LEC's service area. He stated that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Therefore, his analysis is limited to the wire centers in the rural service areas.

Dr. Zolnierrek conducted an independent creamskimming analysis of the population per square mile for each of the wire centers in rural ILECs for which redefinition is sought by the Company within the Cellular Properties proposed ETC-designated service area. With respect to each such wire center, he found that the information he collected did not provide any reason to believe that the potential for creamskimming exists with respect to Cellular Properties' proposal to serve only a portion of the ILEC service area. Dr. Zolnierrek recommended that the Commission find that the potential for creamskimming effects does not arise with respect to the Cellular Properties' proposed ETC area.

Therefore, the Commission finds that there are no potential creamskimming issues related to Cellular Properties' proposal to redefine the service areas of Wabash Telephone Cooperative, Inc., Odin Telephone Exchange, Inc., Montrose Mutual Telephone Co., Verizon South, Inc. - IL (Alltel), Citizens Telecom Co Illinois - Frontier Citizens - IL, Illinois Consolidated Telephone Co. for purposes of its designation as an ETC.

Based on the record, and subject to the commitments and conditions found appropriate herein, the Commission concludes that Cellular Properties has shown that its designation as an additional ETC is in the public interest for each of the ILEC service areas within their proposed ETC Designated Service Areas except for the Wabash exchanges of Cisne and Mt. Erie which the Commission excludes from the Cellular Properties service area as explained earlier in this Order.

For purposes of the instant docket, this public interest finding is made with respect to both the rural telephone company and non-rural telephone company service areas contained in whole or in part within the Cellular Properties proposed ETC Designated Service Areas. While the FCC indicated that the public interest analysis could be conducted or concluded differently depending upon whether the area served was that of a rural or non-rural telephone company, the Commission need not determine in this Order whether to apply the public interest analysis differently as between rural and non-rural telephone company areas.

## **VII. OVERALL CONCLUSIONS**

The Commission has found that the requirements in Section 214(e) of the Federal Telecommunications Act of 1996 and the FCC ETC Order and rules provide appropriate minimum guidelines for this Commission in evaluating the ETC application in this proceeding.

In view of the determinations on the issues made above, which will not be repeated here, and subject to the commitments and conditions found appropriate herein, the Commission finds that Cellular Properties has made the necessary showings contemplated in Section 214(e) and the FCC ETC Order and rules. Accordingly, Cellular Properties should be designated as an eligible telecommunications carrier in its proposed ETC Designated Service Area (with the exception of the Cisne and Mt. Erie exchanges of Wabash Telephone Company) for purposes of receiving federal Universal Service Fund support, subject to the conditions imposed below.

## **VIII. COMMITMENTS AND CONDITIONS**

Cellular Properties has made a number of voluntary commitments that are discussed in this Order and are listed below. Staff, and in some instances IITA, have recommended that these commitments be made conditions to the Order.

The Commission concludes that the commitments set forth below are necessary and appropriate conditions with which Cellular Properties should comply in connection with its designation as an eligible telecommunications carrier, and specifically the public interest analysis. Accordingly, the Commission adopts each of the following commitments as conditions subsequent to this Order and to the ETC designation granted to Cellular Properties.

1. Cellular Properties, Inc. shall comply with the Illinois Wireless Emergency Telephone Safety Act and 83 Ill. Adm. Code Part 728, including future amendments thereto.
2. Cellular Properties, Inc. shall advertise to the public in its ETC Designated Service Area the fact that it is offering the supported universal services and the charges for those services in local circulation newspapers in its serving areas no less than twice annually. Cellular Properties, Inc. shall also post such

information on its website and shall have informative brochures regarding such service available in each of its retail locations and each of its authorized agent locations.

3. Cellular Properties, Inc. shall offer Lifeline and Link-Up services and advertise the availability of such services consistent with the advertising requirements set forth in Condition 2 above. In addition, Cellular Properties, Inc. shall advertise its Lifeline and Link-Up services in accordance with the requirements of 83 Illinois Administrative Code Part 757 and shall disseminate information regarding its Lifeline and Link-Up Services in locations where qualified, unserved consumers are likely to find such information useful, such as unemployment and welfare offices within its ETC designated service area. In addition, all low income USF funding received by Cellular Properties, Inc. in connection with its Lifeline and Link-Up services shall be used to support subsidized rates for its Lifeline and Link-Up customers.
4. Cellular Properties, Inc. shall provide Lifeline subscribers "equal access" to interexchange carriers of their choice subject to the caveat that the subscribers shall be responsible to pay the toll charges directly to the selected IXC.
5. Cellular Properties, Inc. shall abide by its commitment to provide service throughout its ETC Designated Service Area to all customers who make a reasonable request for service using the standards set forth in paragraph 22 of the FCC ETC Order. Specifically, if its network already passes or covers the potential customer's premises, Cellular Properties, Inc. shall provide service immediately.

If a request comes from a potential customer within the Company's ETC Designated Service Area but outside its existing network coverage or where signal strength is weak, Cellular Properties, Inc. will provide service within a reasonable period of time if service can be provided at a reasonable cost utilizing one or more of the following methods: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. Finally, if Cellular Properties, Inc. determines that it cannot serve the customer using one or more of the foregoing methods, then it will report the unfulfilled request to the Commission within 15 days after making such determination.

6. Cellular Properties, Inc. shall abide by its commitment to comply with 83 Ill. Adm. Code Sections 730.325 and 730.550 with regard to Emergency Power Requirements and Notification to the Commission of Minor and Major Outages as set forth in this Order.
7. Cellular Properties, Inc. shall abide by the final rules regarding consumer protection and service quality standards for wireless ETCs that are ultimately

promulgated by the Commission in the pending rulemaking proceeding in ICC Docket 06-0468 and all future amendments thereto. In addition, Cellular Properties shall comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA").

8. Until such time as the Commission shall have entered a final order implementing an administrative rule regarding consumer protection and service quality standards for wireless carriers that are designated as eligible telecommunications carriers, Cellular Properties, Inc. shall comply with and meet the standards otherwise applicable to local exchange carriers contained in the following sections of 83 Ill. Adm. Code Parts 730 and 735, including making necessary changes to its existing practices to meet certain of such standards, and subject to the caveats with respect to certain of such standards as discussed in this Order. The subsections subject to this commitment are:
  - Section 735.70 except 735.70(b)(1)(G)--Customer Billing;
  - Section 735.80--Deferred Payment Agreements;
  - Section 735.100 except 735.100(e)--Applicants Service;
  - Section 735.110--Present Customers Regarding Deposits;
  - Section 735.120--Deposits;
  - Section 735.130--Continuance of Service;
  - Section 735.140--Illness Provision;
  - Section 735.150 except 735.150(d)--Payment for Service;
  - Section 735.160 except 735.160(d)--Past Due Bills;
  - Section 735.170--Service Restoral Charge;
  - Section 735.190--Dispute Procedures;
  - Section 735.200--Commission Complaint Procedures;
  - Section 735.220--Second Language;
  - Section 735.230--Customer Information Booklet;
  - Section 730.510 (using the documentation and reporting procedures for small ILECs set forth in Consolidated Docket Nos. 04-0209, et seq.)--Answering Time regarding Operator and Business and Repair Office Answer Times;
  - Section 730.520--Interoffice Trunks;
  - Section 730.535(d) and (e)--Interruptions of Service;
  - Section 730.540--Installation Requests;
  - Section 730.305--Maintenance of Plant and Equipment;
  - Section 730.340--Incorporation of National Codes and Standards Regarding Grounding and Bodily Maintenance;
  - Section 730.440--Provisions for Testing Regarding Testing Facilities;
  - Section 730.405--Call Data Records;
  - Section 730.410--Call Data Reading Intervals;
  - Section 730.420--Call Data Reporting Equipment Requirements;
  - Section 730.500 (only as it relates to Section 730.520)--Adequacy of Service.

9. Cellular Properties, Inc. shall, prior to entering into a contract with a customer, or conclusion of any applicable trial period, provide a written disclosure to the customer explaining that it will not provide a telephone directory to the customer and that the customer's telephone number will not be published in any telephone directory. Such disclosure shall be made in a typeface of 10-Point or larger, and shall be otherwise clear and conspicuous.
10. Cellular Properties, Inc. shall offer its proposed ILEC Equivalent Plan with unlimited in-bound and out-bound local usage as described in this Order, provided this condition does not require Cellular Properties, Inc. to offer such service at any particular rate after the fifth anniversary of the effective date of this Order. Prior to such fifth anniversary Cellular Properties, Inc. shall offer the ILEC Equivalent Plan at the rates identified in this Order unless the Commission shall eliminate or otherwise modify this condition based on good cause shown.
11. Cellular Properties, Inc. shall provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
12. On or before August 1 of each year, Cellular Properties, Inc. shall submit reports to the Manager of the Commission's Telecommunications Division certifying, reporting and providing information as required by paragraphs 23 and 69 of the FCC ETC Order and 47 CFR §54.209, and discussed in the instant Order. To the extent that any such information is proprietary, it may be submitted and shall be treated as proprietary and confidential under appropriate motions.
13. Cellular Properties, Inc. shall provide prior written notice to the Commission of any material changes in its five-year investment plan.
14. Cellular Properties, Inc. will provide, on an annual basis, detailed explanations, as set forth in the FCC ETC Order, in the event any targets of its five-year investment plan are not met.
15. In addition to the investments included in its five-year investment plan, any surplus universal service funds received by Cellular Properties, Inc. shall be directed first to under-served study areas, and the wire centers that do not receive direct benefits under the initial five-year plan disclosed in the record will receive priority for additional build-out in subsequent five-year plans.
16. Cellular Properties, Inc. shall abide by its carrier of last resort commitments if and to the extent that the incumbent ILEC in one or more wire centers relinquishes its ETC designation.
17. Cellular Properties, Inc. will comply with all applicable statutes and rules affecting ETC status and obligations thereunder.



## **XI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, after reviewing the record herein, is of the opinion and finds that:

- (1) Cellular Properties, Inc. is telecommunications carrier that provides CMRS services in Illinois;
- (2) the Commission has jurisdiction over Cellular Properties, Inc. and the subject matter of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the conditions subsequent found appropriate in this Order should be imposed in connection with the ETC designation to be granted herein, and the granting of such designation is subject to future compliance by Cellular Properties, Inc. with those conditions; and
- (5) Cellular Properties, Inc. should be designated as an Eligible Telecommunications Carrier for purposes of receiving support from the Federal Universal Service Fund with respect to the designated ETC service area shown in Applicant's Exhibit 1.1, including the wire centers listed in Applicant's Exhibit 1.2 with the exception of the Cisne and Mt. Erie exchanges of Wabash Telephone Company.
- (6) The General Counsel or her designee, in accordance with the applicable federal regulations, should by letter give notice to the Federal Communications Commission and the Universal Service Administrative Company.

IT IS THEREFORE ORDERED that Cellular Properties, Inc. is hereby designated, effective as of the date of this Order, as an eligible telecommunications carriers for purposes of receiving federal Universal Service support in the ETC-designated service areas depicted in Applicant's Exhibit 1.1, including the wire centers listed in Applicant's Exhibit 1.2 with the exception of the Cisne and Mt. Erie exchanges of Wabash Telephone Company, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Cellular Properties, Inc. shall comply with the conditions set forth in Section VIII of this Order.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Wabash Telephone Cooperative, Inc. service area to include only the Bible Grove, Louisville and Xenia wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area

redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Odin Telephone Exchange, Inc. service area to include only the Martinsville and Oblong wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Montrose Mutual Telephone Co. service area to include only the Gila and Montrose wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Verizon South, Inc. - IL (Alltel) service area to include only the Potomac, Collison, Kansas, Westfield, Casey, Greenup, Toledo, Cheneyville, Hoopeston, East Lynn, Rankin, Armstrong, Royal, Ogden and Neoga wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Citizens Telecom Co Illinois - Frontier Citizens - IL service area to include only the Edgewood and Farina wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the Illinois Commerce Commission hereby approves the proposed redefinition of the Illinois Consolidated Telephone Co. service area to include only the Arcola, Humboldt, Oakland, Ashmore, Atwood, Arthur, Mattoon and Sigel wire centers for purposes of designating Cellular Properties, Inc. as an ETC and certifies to the FCC that such redefinition is appropriate; Cellular Properties, Inc. is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the proprietary exhibits admitted into the record; namely, Applicant's Exhibit 1.3 Proprietary, Applicant's Revised Exhibit 1.3 Proprietary, Applicant's Group Exhibit 1.4 Proprietary, Applicant Exhibit 2.1 Proprietary, Applicant

Exhibit 2.4 Proprietary, Applicant Exhibit 2.5 Proprietary, Applicant Group Exhibit 2.6 Proprietary, and IITA Schedules 1.3 Proprietary, 1.5 Proprietary, 1.14 Proprietary, and 1.15 Proprietary, which are attached to IITA Exhibit 1.0, are hereby afforded confidential and proprietary treatment for 5 years from the date of this Order, and said exhibits shall be maintained under seal by the Chief Clerks office for such period of time.

IT IS FURTHER ORDERED that the General Counsel or her designee, in accordance with the applicable federal regulations, shall by letter give notice to the Federal Communications Commission and the Universal Service Administrative Company.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 27<sup>th</sup> day of February, 2008.

(SIGNED) CHARLES E. BOX

CHAIRMAN